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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

LAMM, MARINA

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 05/07/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/848,462

Applicant(s)

MONDET, JEAN

Examiner

Marina Lamm

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-13 and 15-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,8-10 and 15-37 is/are rejected.
- 7) ☒ Claim(s) 4-6 and 11-13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/27/03 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 8-10, 15-21, 27-35 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee et al. (US 5,919,437).

Lee et al. teach cosmetic compositions in the form of creams or sticks, containing 2-30% of an organopolysiloxane material as a gelling agent. See Abstract; col. 4, line 27; col. 7, line 48. The organopolysiloxane material includes vinyl-terminated polydimethylsiloxanes. See col. 6, lines 55-60. The vinyl-terminated polydimethylsiloxanes are within the scope of the instant claims because they contain organosiloxy units (i.e. dimethylsiloxy units wherein R=methyl; b=0 and a=2) and end groups capable of forming nitrogen bonds (i.e. vinyl groups). The compositions of Lee et al. contain silicone oils such as dimethicone and phenyltrimethicone. See Examples 6 and 7. The compositions may be anhydrous and may also

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contain various actives, such as colorants, sunscreens, antiperspirant salts, fragrances and anti-microbials. See Abstract; col. 8, lines 48, 51-55. The compositions of Lee et al. are applied to the skin and include, but not limited to antiperspirant/deodorant compositions. See col. 3, lines 44-59; col. 4, lines 21-34, 63-67.

Thus, Lee et al. teach each and every limitation of Claims 1-3, 8-10, 15-21, 27-35 and 37.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 22-26 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. in view of Mellul et al. (US 5,738,841).

Lee et al. applied as above. The reference does not explicitly teach cosmetic fatty substances of the instant claims. However, it is conventional in the art to employ solid fatty substances of the instant invention, as well as various additives, fatty esters and alcohols in cosmetic compositions. Thus, Mellul et al. teach cosmetic compositions containing silicone oils, gums and/or waxes, esters of fatty acids, fatty alcohols, waxes and pigments. See col. 2, lines 47-55; col. 3, lines 7-67.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to use cosmetic fatty substances of Mellul et al. for make-up

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compositions of Lee et al. for their art-recognized purpose and with a reasonable expectation of beneficial results such as improved skin feel and emollient properties of the compositions.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Allowable Subject Matter

6. Claims 4-6 and 11-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. No claim is allowed at this time.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5,266,321 and US 6,184,277.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (703) 306-4541.

The examiner can normally be reached on Monday to Friday from 9 to 5.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

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4/30/03

JOSE G. DEES
SUPERVISORY PATENT EXAMINER

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